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ABSTRACT

This lesson on dealing with legal issues, the ninth in a series of 18 units, is part of the first level of a comprehensive entrepreneurship curriculum entitled: A Program for Acquiring Competence in Entrepreneurship (PACE). (Designed for use with secondary students, the first level of PACE introduces students to the concepts involved in entrepreneurship and helps them become aware of entrepreneurship as a career option.) The following topics are covered in the unit: the importance of a basic understanding of legal issues when owning or managing a small business, the meaning of the term "contract," the conditions that call for a written contract, and the essential components of a contract. Included in the lesson are instructional text organized in a question-and-answer format, individual and group learning activities, a case study, and assessment questions. (MN)

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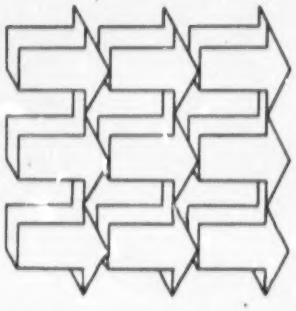

UNIT 9

- [x] Level 1
- [ ] Level 2
- [ ] Level 3

Dealing with Legal Issues

Developed by M. Catherine Ashmore and Sandra G. Pritz

You will be able to:

- **Describe why a basic understanding of legal issues is important to the small business owner/manager.**
- **Define the term "contract."**
- **Identify the conditions that call for a written contract.**
- **Name and describe the five essential components of a contract.**

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Research & Development Series No. 240 AB 9

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BEFORE YOU BEGIN...

1. Consult the *Resource Guide* for instructions if this is your first PACE unit.
2. Read the Unit Objectives on the front cover. If you think you can meet these objectives now, consult your instructor.
3. Look for these business terms as you read this unit. If you need help with their meanings, turn to the Glossary in the *Resource Guide*.

agreement
consideration
contract
contractual capacity
exculpatory clauses
legality
reality of consent
usury

DEALING WITH LEGAL ISSUES

WHAT IS THIS UNIT ABOUT?

The small business owner/manager deals with a variety of legal issues. The process of working with these issues is very challenging. This unit is designed to help you meet the challenge.

As you study this unit you will answer the following questions: Why are legal issues important? What is a contract? What conditions call for a written contract? What are the five essential components of a contract? What basic information does the entrepreneur need to understand about each of the essential components?

When you complete the unit, you will be aware of what the small business owner/manager needs to know about basic legal issues. You will not be a legal expert, but you will know where to get help with problems of a legal nature.

Two other PACE modules will help you learn more about legal issues. They are titled *Choosing the Type of Ownership* and *Complying with Government Regulations*. You will learn more about how these modules can help you as you study the information in *Dealing with Legal Issues*.

WHY ARE LEGAL ISSUES IMPORTANT?

The small business owner/manager needs to know how to deal with legal issues. The proper handling of legal issues can help contribute to your business success. Improper handling of these issues can cause business failure. Take a closer look at how the business person deals with legal issues. Study the case of a prospective entrepreneur. Her name is Ruth Fletcher.

Ruth has just decided to become an entrepreneur. She plans to open an ice cream store in a local shopping center. Recently, Ruth finished a business law class. She took the class in order to develop a basic understanding of business law. She believed that this knowledge would be important to her as the owner/manager of a small business.

Ruth's understanding of business law will help her deal with legal issues related to her business operations. It will also help her identify her personal and professional legal obligations.

Through her business law course, Ruth learned that she needs to know (1) when to seek advice from a legal counselor, and (2) where to get this advice. Although Ruth has a basic understanding of business law, she still needs to select an attorney for the business. The attorney can provide advice that will help Ruth make informed decisions.

Ruth's attorney can assist her in selecting the type of ownership for the business. Once this decision is made, Ruth will be better prepared to deal with legal issues.

Ruth will be well prepared to deal with selecting the type of ownership for her business because of (1) her own knowledge of business law, and (2) the assistance of her attorney.

For the present time, Ruth has decided to operate a sole proprietorship. She will own the ice cream store and have exclusive rights to it. If she wants to change the legal form of her business at a later date, she will be able to do this. In fact, her attorney will be able to assist in this process.

In Ruth's case, she may need assistance as the business grows. In order to obtain this assistance, Ruth may ask her brother to join the organization as her partner. If her brother agrees, Ruth will be able to change the legal form of her business from a sole proprietorship to a partnership. Ruth and her brother would share both the profits and risks involved in operating the ice cream store if they formed a partnership.

In their day-to-day business operations, entrepreneurs like Ruth deal with a variety of activities that involve business law. These activities include selling products or services, signing a lease, borrowing money, and purchasing items for the business. One of the most basic legal issues that affect the small business owner/manager is the contracts that are made in these daily transactions.

WHAT IS A CONTRACT?

A contract is a mutual agreement made between two or more persons that is valid and enforceable by law. Take a look at a couple of contracts.

Ruth Fletcher and Sam Wong have a contract. Ruth agrees to pay Sam $20 for cleaning her store on Thursday evening after closing time. Ruth has promised to pay Sam for performing a service. This is a *unilateral contract.*

Ruth also has a contract with Russ Rosen. Russ has agreed to sell his floor polisher to Ruth, and she has agreed to pay Russ $500 for it. This is a *bilateral contract.* It involves a promise for a promise.

A contract does not have to be written to be legal. Oral contracts can be enforced if their terms can be established in a court of law. Sometimes however, oral contracts present problems. It is very difficult to establish what has been agreed upon with an oral contract. Each party is relying on personal memory and bias.

WHAT ARE THE CONDITIONS THAT CALL FOR A WRITTEN CONTRACT?

When money is involved, it is typical to put contracts in writing. In addition, the following conditions call for a written contract:

1. Any contract for the sale of land or an interest in land
2. Any contract that will not be performed within one year
3. A promise by one person to pay the debt of another
4. Any contract that involves the purchase of real property valued at $500 or more

In deciding when to use written contracts, it is safest to use them on all but minor matters. This way, if there is a problem with the contract, the business person can spend time trying to get performance or an award for damages rather than arguing over the terms of contract that were initially agreed upon. When drawing up a contract, it is best to have an attorney look over the agreement. The attorney will be able to make sure that everything has been stated properly. In addition, the attorney should be able to identify any possible problems regarding the contract and give advice about how they might be resolved.

Even with a competent attorney, the small business owner/manager needs to know the major requirements of a contract. These requirements cause the contract to be legal and binding.

Knowing these requirements will increase the entrepreneur's awareness of some of the problems often encountered in the enforcement of contractual agreements. The major requirements of a contract are often called the five *essentials* of a contract.

WHAT ARE THE FIVE ESSENTIAL COMPONENTS OF A CONTRACT?

The five essential components of a contract are—

- agreement,
- consideration,
- contractual capacity,
- legality,
- reality of consent.

Contracts that are enforceable by law have these five items. Take a closer look at each of these items with emphasis on some key elements a small business owner/manager should understand about each item.

WHAT IS AGREEMENT?

The first and most important element of the contract is agreement. For agreement to exist, there must be a reasonably definite understanding between the parties. Agreement occurs under the following conditions:

1. An *offer* is made. (An offer is a proposal that expresses a desire to enter into a legally binding agreement.)

2. The offer is followed by *acceptance*. (Acceptance occurs when the party to whom an offer has been made agrees to the proposal.)

3. The offer and the acceptance create a reasonably definite understanding between the parties who are involved in the contract.

Some of the most important ingredients for agreement are intent to contract, reasonable definiteness, and communication. Take a closer look at these items.

Intent to contract. Sometimes when people talk business they do so in exploratory terms. There is no agreement and no contract. For a contract to exist, the parties involved must intend to contract. This means that all parties must want to enter into the contract and to meet the terms of the contract. The following example will help you learn more about intent to contract.

A business person decides to purchase notebooks. He telephones a vendor. He usually purchases a lot of merchandise from this particular vendor. Listen in on a telephone conversation between the owner/manager and the vendor.

OWNER: Good morning! I'm interested in purchasing notebooks. I'd like to know the cost for item 225 in your catalog.

VENDOR: The price for item 225 is $25 per box of twenty-five.

OWNER: That's too high. They aren't worth that much. The most I'll pay is $20 per box, and I'd like to get them for $15.

The vendor laughs, and they hang up.

The next day, the vendor delivers a shipment of merchandise to the business. A box of twenty-five notebooks (item 225) is included in the shipment. They are marked $20. The business person sends them back to the vendor.

Can he return the shipment? Yes! In this particular example, the business person and the vendor were talking in exploratory terms. They did not reach an agreement. There was no agreement and no contract.

Reasonable definiteness. In order for an agreement to exist, the offer has to be reasonably definite. This means that the terms have to be specific enough to determine when the parties to the contract have lived up to their promises. The following examples will help you understand what is meant by reasonable definiteness.

A supplier offers to sell merchandise to a store buyer for $10,000. Credit terms are to be arranged. At first, the buyer agrees. Later, the buyer decides to back out.

Can the buyer back out? In this particular example, the buyer is able to do this. Why? The vendor's offer lacks reasonable definiteness. The statement "with credit terms to be arranged" is too vague. Let's take a look at another example.

A supplier offers to sell merchandise to a store buyer. The supplier will deliver the merchandise on the first day of the month. Credit terms are 2/10, net 60 (2 percent discount if paid in ten days; the net amount due in sixty days). The buyer agrees and the merchandise is delivered on the first day of the month.

In this example, the offer was reasonably definite. The terms are specific. A court of law can determine when the parties to the contract have lived up to their promises.

Communication. In order to have a contract, an offer has to be communicated to the offeree. Take a look at another situation to understand more about communication.

An entrepreneur established a valet parking system for her restaurant. The valet provides each person with a ticket stub. The ticket stub contains the following information: "Our business will not be liable for loss or damage to autos regardless of cause."

A customer uses the valet parking system. The customer's car is stolen from the parking lot. The customer sues the entrepreneur.

Can the entrepreneur be held liable? Yes, the entrepreneur may be liable. Why? Simply stamping the statement on the parking stub does not constitute communication. Instead, conditions must be brought to the attention of the offeree.

Review what you have learned so far. Three items—intent to contract, reasonable definiteness, and communication—are necessary for agreement. In addition, there must be an offer followed by an acceptance. The offer and the acceptance must create a reasonably definite understanding between the parties involved in the contract. Learn more about agreement by studying some other cases.

Mary was vacationing in Texas. She visited some stores and found one very nice antique store. Mary wanted a lovely chair in the store. Listen to the conversation between Mary and the store owner.

MARY: How much do you want for this chair?

OWNER: Isn't that lovely? I'm asking $500 for it.

MARY: I won't pay that, but I'll give you $300.

Is there agreement in this case? No, there is no agreement. Why? In this case, there is no acceptance. In order to have acceptance, the offeree must agree to the offer as stated.

In this case, there is an offer. It is followed by a rejection of the offer and a counteroffer. The store owner offered to sell the chair for $500. Mary rejected the offer when she said "I won't pay that. . . ." She made a counteroffer when she said "I'll give you $300."

If the owner agrees to sell the chair for $300, they will have an agreement. If not, either the owner or Mary may make another offer.

Take a look at another case to learn more about acceptance.

Bryan Brandon owns a bookstore. Recently he received a letter from a potential supplier. The letter informed Bryan of a new line of merchandise. One part of the letter stated: "If I do not hear from you within ten days, I shall assume that you want these items and will mail them to you."

Bryan ignored the letter. Three weeks later, the shipment of merchandise was delivered to Bryan.

Is Bryan required to buy this merchandise? No, Bryan is not required to buy this merchandise. Why? Bryan did not ask for the merchandise.

Bryan simply ignored the letter. His silence does not imply acceptance. In most instances, silence cannot be constituted to imply the acceptance of an offer.

Can Bryan keep the merchandise and refuse to pay for it? If Bryan wishes to keep the merchandise, he must pay for it. Bryan will not be able to keep the merchandise and refuse to pay for it. This would be illegal. If Bryan does not want the merchandise, he should return it at the supplier's expense.

When does acceptance take place? Acceptance is effective when it is communicated to the person who made the offer (or that person's agent).

Bryan receives a letter from a supplier. The supplier offers to sell merchandise at a reduced rate.

Bryan phones the supplier. He agrees to purchase the merchandise.

Acceptance occurs when Bryan phones the supplier and agrees to purchase the merchandise. The supplier can send the merchandise.

There are some fine points of law when it comes to acceptance. As a safeguard against errors, legal advice should be obtained before an agreement is made. In most cases, the agreement should be drawn up by a lawyer.

WHAT IS CONSIDERATION?

A second requirement for a legal contract is consideration. Consideration is something of value that is given to the offeror by the offeree. What constitutes consideration? One of the ways in which the courts have tried to answer this question is with the detrimental test.

Will the person bringing suit suffer a detriment (loss or damage) if the contract is not carried out? Has the person already suffered a loss? If the answer is yes, the courts will hold that consideration existed.

Sherry Allen has been employing Diane Rae as a babysitter for several years. Recently, Diane has also been working as a waitress in the evenings.

Sherry has become very concerned about Diane's second job. When Diane is babysitting, she is very sleepy. Sherry is afraid that Diane is not able to take good care of her two children. As a result, Sherry and Diane have the following conversation.

SHERRY: I'm concerned about you and your new job.

DIANE: What's your concern?

SHERRY: I think that you are staying up too late. You are very sleepy, and you are working too hard.

DIANE: I have to. I need the money.

SHERRY: I'm also concerned that you aren't awake, alert, and able to look after the children.

DIANE: Oh, I see. Sherry, I don't know about that, but I need the money.

SHERRY: Well Diane, how much do you make per week as a waitress?

DIANE: About $200 with tips and all.

SHERRY: I'll pay you $100 more per week if you will give up your waitress job.

Diane gives up her job as a waitress, but Sherry doesn't increase her salary. Diane takes Sherry to court.

What happened in this particular case? The court decided that Diane was right. Sherry was required to pay the extra $100 per week. The court ruled that Diane incurred a detriment by giving up her job as a waitress.

Another area of importance in studying consideration is that of *preexisting obligations*. If a person who suffered a loss was required to do so by preexisting obligations, that person cannot demand damages of any type.

Packer's Grocery Store has offered a $100 reward for information leading to the arrest of a person who robbed the store.

On Friday morning, Sue Stonner, a local policewoman, obtained information leading to the arrest of a person who robbed the store.

Can Sue claim the reward? No, Sue will not be able to receive the reward. Why? Sue is carrying out a preexisting obligation. Because she is a policewoman, she is expected to arrest the robber.

Another idea that the small business owner/manager should understand about consideration is *mutuality of obligation*. Mutuality of obligation means that both parties are tied to the agreement. Neither has a way out of the agreement. If either the buyer or the seller has a way out of the agreement, there is no consideration.

WHAT IS CONTRACTUAL CAPACITY?

Another requirement of a legal contract is that of *contractual capacity*. All parties to the contract must be able to make legally binding agreements. Individuals who have the capacity to contract are known as competent parties.

Those who do not have the capacity to contract are classified as incompetent. They include persons who are mentally ill or insane, intoxicated by drugs or liquor, or under legal age.

Any individual who is judged insane cannot be held responsible for contracts signed while in this condition. If someone was intoxicated when a contract was entered into, the courts will set aside the agreement. However, the person who is asking the court to set aside the agreement must be able to prove that the individual who signed the contract was so intoxicated at the time that the contractual terms were unclear.

Doing business with persons who are under the legal age can present a problem for the small business owner/manager. The owner/manager may have a difficult time with some of the contracts made with these people. Why? Any person who is under legal age is known as a minor. In some states, a minor is a person who is under the age of eighteen. In other states, a minor is a person who is under twenty-one years of age. State laws determine the legal age in a particular state.

The minor is offered a great deal of protection under the law. Minors can usually void contracts at their option. Minors cannot void contracts if they have misrepresented their age. They cannot void contracts when they are buying necessities. In addition, minors can ratify earlier contracts when they reach the legal age. Examine some cases dealing with minors.

Alice is a minor. She will reach the legal age on her birthday. Her birthday is the tenth of next month.

Alice recently purchased a stereo. She paid $80 down and agreed to pay $30 each month until she has paid for the stereo. Alice has made her payments on schedule.

Can Alice void the contract? At this time, Alice would be able to void the contract.

Alice decided not to void her contract. She continued making payments for several months after her birthday. Can she still void her contract? No, Alice cannot void the contract. Because she continued to pay for the stereo after reaching the age of majority, Alice has ratified the contract. She must continue to abide by the agreement.

Russell Finder purchased an overcoat for winter. After the winter season, Russell tried to return the coat. He said that he was a minor and he wanted his money back.

Can Russell void the contract? No, not completely. Why? The coat was necessary for the winter. The courts have ruled that minors will have to pay reasonable value at the time of purchase for necessities.

Minors cannot disaffirm every contract. Agreements calling for the purchase of necessities create at least a partial responsibility for the minor. Usually, the minor is liable for the reasonable value of the goods actually used.

WHAT IS LEGALITY OF PURPOSE?

Another requirement of a contract is legality of purpose. A contract must be legal in its objective. It must not be contrary to the interest of society in its formation, purpose, and performance. And a contract in violation of the law is not enforceable.

Any agreement that involves gambling or a lottery is usually illegal. However, some states have legalized lotteries and race tracks under state supervision.

In most states, laws require that people who work in certain professions, trades, or businesses have a license. Typical examples are doctors, lawyers, real estate brokers, insurance agents, druggists, and contractors. Contracts with an unlicensed business person are void if that person is required by law to have a license.

Usury is a term that refers to charging excessively high interest rates. Most states have laws stating that a lender of money may not charge more than a maximum rate of interest. If an individual enters

into a contract that requires more than the interest rate set by law, this is usury. Such contracts are illegal.

Contracts that unreasonably restrain trade or competition in interstate commerce are in violation of federal law. Unreasonable restraint of trade occurs under the following conditions: (1) when prices are controlled, production is limited, or a monopoly is created; (2) when restraint limits competition unreasonably; and (3) when restraint unreasonably limits the transfer of property.

Exculpatory clauses refer to provisions in a contract that free one party from liability in the event of a problem or injury to the other party. Exculpatory clauses in bailment contracts are not legal. In most instances, the courts are unwilling to enforce such provisions.

This is especially true with the bailment contract that contains an exculpatory clause. Usually, the bailment contract has two parties: a bailor and a bailee. The bailor gives the bailee something to hold or protect. For example, a customer enters a restaurant and checks a coat. The customer is the bailor and the restaurant is the bailee. Under general bailment law, the bailee is liable for any damages to, or loss of, property that results from bailee negligence. Bailees attempt to escape this liability through use of an exculpatory clause in the bailment contract. For instance, the restaurant might post a sign, "Not responsible for lost or stolen garments." Recently, the courts have not allowed the bailee to escape liability so easily. If the coat is lost, the restaurant owner is responsible if the act was a result of negligence. As long as the bailor can show that the loss occured through negligence on the part of the bailee, the bailor can recover damages.

What is the effect of illegal contracts? Usually, illegal contracts are not enforceable. As a result, neither party to an illegal contract is given assistance by the courts. At times, the courts have intervened. In these cases, not intervening would cause an unfair hardship. Take a look at some of these cases.

Howard Masters agreed to sell a television and a stereo to Judy Mackson. Judy agreed to pay $500 for the television and an additional $300 for the stereo.

Later, Judy learned that Howard did not own the television. He had no right to sell it.

What can Judy do? In this case, Judy can sue Howard. Although the first part of the contract is not good, the second part of the contract is binding. The courts will allow Judy to purchase the stereo for $300.

Bill Nathan purchased insurance from a local insurance firm. However, Bill didn't krow that the insurance firm was not licensed to sell insurance.

Bill's business was destroyed by fire. The insurance firm refused to pay on the grounds that the contract was illegal.

What can Bill do about this situation? Bill can take his case to court. In most instances, the courts will require payment to Bill.

WHAT IS REALITY OF CONSENT?

The next requirement for a contract is *reality of consent*. This is missing when the agreement contains fraud, innocent misrepresentation, or mistakes.

What is fraud? Fraud is deception with the intent of misleading another person. Sometimes, silence can constitute fraud.

Mark Sevechie purchases an insurance policy. In the process of buying the policy, Mark neglects to tell the agent that he had a heart attack a year ago.

Three days later, Mark has a heart attack and dies. At this point, the insurance firm refunds all premiums and refuses to pay the face value of the policy to Mark's estate.

In this case, Mark was guilty of fraud. He did not reveal his heart condition. If the insurance agents had known of Mark's heart condition, they would have refused to insure him.

What is misrepresentation? Misrepresentation is a false statement of fact. It is made innocently without an intent to deceive another person.

What is the difference between fraud and misrepresentation? In most cases, fraud is intentional and misrepresentation is made innocently. With misrepresentation, there is no purposeful intent to deceive another person.

Matters of opinion, predictions, or statements of value may be misrepresentation. In selling a painting to a customer, the salesperson says, "I think this is a good investment." This is a matter of opinion. However, if the person who made this statement is regarded as an expert, the courts may hold that the individual is guilty of fraud.

Take a look at some cases. Try to decide if they contain fraud or misrepresentation.

A realtor is trying to sell property to a prospective small business owner/manager. This person is interested in buying some land and building a business from scratch.

In the process of selling the land, the realtor says, "This land has been zoned for commercial purposes. You will have no trouble building your business here."

After buying the property, the owner/manager learns that the land is not zoned for commercial purposes. What can be done? The owner/manager can take the case to court.

The courts have made different decisions in similar cases. Some courts have ruled, "Let the buyer beware." They believe that the buyer should check out the accuracy of the statement before purchasing.

In recent years, the courts have started changing their stance. In this case, the realtor should know the law due to professional status. The realtor should not have made this erroneous statement. Therefore, the realtor can be found guilty of fraud. The realtor should know what the land was zoned for. Action could be brought if the realtor misrepresented (even innocently) such a key fact.

In determining whether or not to award damages in case of fraud, the courts usually require the that financial loss has resulted from the misrepresentation. Some times, the injured party merely wants a return of money or property. In such cases, the party asks the court to cancel the contract.

Allan wanted to sell his horse. A buyer came to look at the horse.

The buyer told Allan that she had heard about the horse. She understood that the horse was sired by a champion horse.

Allan said yes. The buyer made arrangements to purchase the horse. After purchasing the horse, the buyer learned that the horse was not sired by a champion.

Did fraud or misrepresentation occur? What do you think? Yes or no? What was the nature of the fraud or misrepresentation?

If you decided that there was a misrepresentation of fact in this case, you were correct. As a result, the contract could be voided.

Sometimes a contract is set aside by the courts when a mistake was made by one of the parties. This occurs when the mistake was one of fact, or when either or both parties to the contract were mistaken about an important fact. It may also occur when one party to the contract was mistaken and can show that the other party knew, or should have known about the mistake at the time the contract was made.

Mrs. Siler purchases an antique vase from Mr. Evans. She believes that it is the original work of the famous potter named Giancomo. Mrs. Siler doesn't tell Mr. Evans this fact. She pays $1,000 for the vase. Later, she learns that the vase is worth no more than $200.

What can be done in this case? Since Mrs. Siler was the only person who was mistaken as to the value of the vase, the contract cannot be with dra n.

Consider another angle on the same purchase.

For several days, Mrs. Siler has been admiring an antique vase in Mr. Evans' antique shop. Mrs. Siler phones Mr. Evans and makes arrangements to purchase the vase. The purchase price is $1,000. Mr. Evans agrees to deliver the vase to Mrs. Siler.

When Mr. Evans tries to locate the vase, he finds that it is missing. He asks one of his employees about the vase. The employee informs Mr. Evans that the vase was broken by another employee just yesterday.

In this case, both parties to the contract were mistaken about an important fact. Neither Mrs. Siler or Mr. Evans knew that the vase was broken when they made their agreement.

WHAT DOES IT TAKE TO MAKE A CONTRACT?

A contract requires agreement, consideration, contractual capacity, legality, and reality of consent. When all five factors are present, a contract exists. Without them, there is no contract.

See if you can identify the missing element in the following case:

Two ladies meet in a restaurant. The following conversation occurs.

MRS. WEST: Hello, Linda.

MRS. SIMS: Wanda! Where did you get that necklace?

MRS. WEST: This? Oh, I bought it in Hawaii.

MRS. SIMS: It's perfect. I'll give you $300 for it.

MRS. WEST: Don't be silly. I wouldn't sell it for less than $600.

MRS. SIMS: It isn't worth that much, but I want it. I'll take it for $600.

MRS. WEST: I'll think it over and let you know.

MRS. SIMS: You can't do that. I agreed to pay your price.

MRS. WEST: I said I'd let you know.

MRS. SIMS: Let me have it and I'll give you a check.

MRS. WEST: I promise you I'll think about it.

Did the women make an enforceable contract or didn't they? If you say they didn't, you are right. Can you say what essential element is missing?

The missing element is agreement. A contract must have a definite offer and acceptance to create agreement. Mrs. West's answer did not constitute acceptance and an agreement was not reached.

ACTIVITIES

Do you feel that you have developed a basic understanding of the legal issues that are important to a small business owner/manager? Will you be able to develop a contract? The following activities will help you become more aware of some of the legal issues that entrepreneurs must face.

INDIVIDUAL ACTIVITY

Make a list of all the contracts that you made during the week. Next, identify the role you played in the contract. When were you the offeror? When were you the offeree?

INDIVIDUAL OR GROUP ACTIVITY

Interview some small business people in your community. Try to discover (1) how much loss they suffer, if any, each year in dealing with *minors*, and (2) what specific policies they follow in such dealings.

INDIVIDUAL ACTIVITY

Prepare a paper (at least one page) that outlines the items that you desire in a contract. As you prepare this paper, you may assume that you are attempting to purchase an item for your own small business.

INDIVIDUAL ACTIVITY

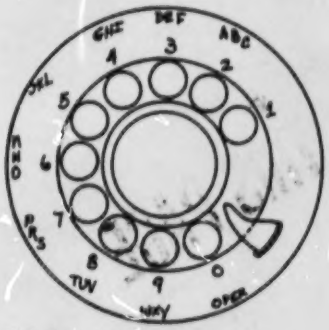
Dialing in on Legal Terms

Part I: Directions

Use the numbers on the telephone dial to decode the following number groups and reveal eight legal terms. Each number represents three letters. For example, the number "6" could be letters M, N, or O. Write the legal terms on a separate piece of paper.

Example:

Consider the following sample problem. The numbers are: 529. The number 5 could be J, K, or L. The number 2 could be A, B, or C. The number 9 could be W, X, or Y. By looking at the letters we can create the word LAW.



1. 2668228
2. 2473363 68
3. 266743372846 6
4. 26687228 25/227224 89
5. 53425489
6. 87879
7. 392857286 79/25287 37
8. 7325489/63/2667368

PART II: DIRECTIONS

After you have decoded the legal terms on the telephone dial, match each of them to one of the descriptions below. On your paper, write the correct legal term next to the number of the description it matches.

1. Ability to enter into a contract.
2. Understanding between the parties of a contract.
3. Charging excessively high interest rates.
4. A mutual agreement made between two or more persons that is valid and enforceable by law.
5. Something of value that is given to the offeror by the offeree.
6. When a person agrees to the terms of a contract without any pressures.
7. Terms of a contract that are enforceable by law.
8. Illegal clauses in bailment contracts that free one party from liability in the event of a problem or injury to the other party.

NOTE: This activity was developed by Linda Skeeters, Marketing and Distributive Education Program, University of Kentucky, 1982.

GROUP ACTIVITY

Get together in small groups of three or four persons. Two of you should work together to negotiate a contract. Use the product and/or the paper you prepared in the individual activity to accomplish this goal. The other member or members of the group should watch the negotiations and evaluate them to determine if a contract has been made.

CASE STUDY

A buyer phoned a vendor and asked the following questions: "How much do you want for a dozen blouses style 902 and what are the shipping terms?" The vendor consulted a price list and replied, "That would be one hundred twenty dollars with terms of 2/10, net 30." The buyer replied, "That's too much. The most I'll pay is $100 with terms of 2/10, net 60." The vendor laughed and the buyer said, "Thanks," and they ended the phone conversation. The next day the blouses were delivered to the buyer. The buyer did not accept them. Answer the following questions on a separate piece of paper.

1. Did the buyer and the vendor have a contract? If you think the answer is yes, explain why a contract existed.

   If no, explain why a contract was not reached and revise the phone conversation to create a contract.

2. What is a counteroffer? Can you find a counteroffer in the case? If so, state the counteroffer?

ASSESSMENT

Directions: Read the following assessment questions to check your own knowledge of these topics. When you feel prepared, ask your instructor to assess your competency on them.

1. Describe why a basic understanding of legal issues is important to the small business owner.
2. Define the term "contract."
3. Identify the conditions that call for a written contract.
4. Name the five essentials of a contract. Describe what is meant by each essential.

SOURCES USED TO DEVELOP THIS UNIT

Fisk, McKee; Mietus, Norbert; and Snapp, James. *Applied Business Law.* Cincinnati: South-Western Publishing Company, 1972.

Goodman, Kennard E. *Today's Business Law.* New York: Pitman Publishing Corporation, 1966.

Lewis, R. Duffy, and Norman, J. *What Every Retailer Should Know About the Law.* New York: Fairchild Publications, Inc., 1963.

Myers, K. O. *The Law of Contracts.* Columbus: Ohio Distributive Education Materials Lab, The Ohio State University, n.d.

For further information consult the lists of sources in the *Resource Guide.*

PACE

Unit 1. Understanding the Nature of Small Business

Unit 2. Determining Your Potential as an Entrepreneur

Unit 3. Developing the Business Plan

Unit 4. Obtaining Technical Assistance

Unit 5. Choosing the Type of Ownership

Unit 6. Planning the Marketing Strategy

Unit 7. Locating the Business

Unit 8. Financing the Business

Unit 9. Dealing with Legal Issues

Unit 10. Complying with Government Regulations

Unit 11. Managing the Business

Unit 12. Managing Human Resources

Unit 13. Promoting the Business

Unit 14. Managing Sales Efforts

Unit 15. Keeping the Business Records

Unit 16. Managing the Finances

Unit 17. Managing Customer Credit and Collections

Unit 18. Protecting the Business

Resource Guide

Instructors' Guide

Units on the above entrepreneurship topics are available at the following three levels:

- Level 1 helps you understand the creation and operation of a business
- Level 2 prepares you to plan for a business in your future
- Level 3 guides you in starting and managing your own business

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